

4 *****
5 DONNA K. SOUTTER, For Herself and On Behalf of All
Similarly Situated Individuals,

6 Plaintiffs,
7 v. Civil Action Number
8 EQUIFAX INFORMATION SERVICES, LLC,
3:10cv107

Defendant.

.3 DEPOSITION OF
.4 KEN MITTENDORFF
.5 October 6, 2010
.6 10:00 a.m. - 11:44 a.m.
.7 Richmond, Virginia

24 JOB NO: 33526

25 REPORTED BY: GWENDA E. APPLEGATE, RPR, CRR

Page 2

1 Deposition of KEN MITTENDORFF, taken and
 2 transcribed on behalf of the Defendant, by and
 3 before Gwenda E. Applegate, Court Reporter, Notary
 4 Public in and for the Commonwealth of Virginia at
 5 large, pursuant to Rule 30 of the Rules of Civil
 6 Procedure, and by Notice to Take Depositions;
 7 commencing at 10:00 a.m., October 6, 2010, at
 8 McGuire Woods, 901 East Cary Street, Richmond,
 9 Virginia.

10 APPEARANCES OF COUNSEL:

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 26 PAUL KUGELMAN, JR., ESQ.,
 27 Counsel for the Deponent

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1 I N D E X

2 WITNESS:

3 KEN MITTENDORFF
 4 Examination by Mr. Love.....4, 70
 5 Examination by Mr. Bennett.....54
 6

7
8
9 E X H I B I T S

10 NUMBER	11 DESCRIPTION:	12 MARKED:
13 Exhibit 1 ...Soutter documents.....	14	15 17
14 Exhibit 2 ...Disposition Update.....	15	16 21
15 Exhibit 3 ...User's Guide.....	16	17 26
16 Exhibit 4 ...Internet screen shots.....	17	18 32
17 Exhibit 5 ...Warrant in Debt.....	19	20 51

18 * * * * *

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1 (October 6, 2010, 10:00 a.m.)

2 KEN MITTENDORFF

3 first duly sworn, testified as follows:

4 E X A M I N A T I O N

5 BY MR. LOVE:

6 Q Mr. Mittendorff, my name is Tony Love, and I
 7 represent Equifax, the defendant in the lawsuit which is
 8 pending in federal court in Richmond, Virginia.

9 You and I spoke on the phone one time before
 10 about this case; is that right?

11 A That's true.

12 Q We've never met before today; correct?

13 A That's true.

14 Q All right, sir. If you would, please just
 15 tell us your job title.

16 A I'm an assistant director of the Department of
 17 Information Systems, and that's at the Supreme Court of
 18 Virginia, Office of Executive Secretary.

19 Q Sure. And how long have you held that
 20 position?

21 A About ten years.

22 Q And what are your responsibilities in your
 23 current position?

24 A I do a big list. One of mine is to solve

1 problems. One is to assist people. I handle
 2 administrative office functions. I do grants. I work
 3 with other state agencies like the state police, DMV,
 4 and go to meetings and probably solve problems. That's
 5 the biggest part. If it gets to be a really tough
 6 problem, then I usually get it.

7 Q All right.

8 A And I do anything when the director is not
 9 there. I sign anything that he would normally sign and
 10 work on procurement and stuff like that.

11 Q Are you familiar with the records that are
 12 maintained by the clerks in the Richmond General
 13 District Court in Virginia, just generally familiar with
 14 those records?

15 A Yes.

16 Q And are you generally familiar with the
 17 records that are maintained by the general district
 18 courts of all the general district courts throughout the
 19 State of Virginia?

20 A Yes.

21 Q And are you also familiar generally with the
 22 records maintained by the circuit courts throughout the
 23 State of Virginia?

24 A Yes.

25 Q How did you gain familiarity with the types of

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1 records maintained by the clerks in the general district
 2 courts and the circuit courts throughout the State of
 3 Virginia?

4 A I've worked in automation at the supreme court
 5 for 35 years, and I was there when we started automating
 6 the courts. And that was back in early '80s was when we
 7 first did a study. And then the first systems we put in
 8 were about 1984, '85. And the first systems we put in
 9 were J&DR, general district, and then we moved on to
 10 circuit court. And we installed case management systems
 11 in all three layers of courts.

12 Q When you say case management systems, could
 13 you give a little more information about that? Is that
 14 a system that was set up at the court level so that the
 15 clerks of the various courts and the general district
 16 courts could use an automated system?

17 A That's correct.

18 Q And what types of things would a clerk of a
 19 general district court or, later, a circuit court -- let
 20 me back up.

21 '84 to '85, that was when the system was set
 22 up in the general district courts; is that correct?

23 A Right.

24 Q Okay. When was the computerized system set up
 25 in the circuit courts?

1 A It would have been after that but not much
 2 more.

3 Q Okay.

4 A I mean, the systems were started in pilot
 5 courts and they expanded. And most everybody was on
 6 by -- because we had to do it slow, almost everybody was
 7 on by about 1995, around that time, except for three
 8 courts. And those are circuit courts.

9 Q Was there a particular reason those three
 10 circuit courts weren't on by '95 like the others?

11 A They had their own systems before we ever
 12 started.

13 Q Let's go back to the '84-'85 time period when
 14 the system was set up for the general district courts.
 15 What type of information could a clerk of a court or an
 16 employee of general district court enter into the
 17 computer system at that time?

18 A Primarily indexing and docketing. You could
 19 get, you could get a docket out and you entered
 20 information, and that's primarily what it would do in
 21 the early part. It got better over time. So what we
 22 have today is not the same as what's there. It does a
 23 lot of the same functions but it's not, it's not the
 24 same. Later we added a financial management system, so
 25 those two interface. So we interface financial

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1 management records with case management records.

2 Q Let's move -- is it fair to say that the
 3 computerized system developed and evolved over the years
 4 so that more data and more information could be
 5 included?

6 A Yes.

7 Q Let's talk about the last five years. Over
 8 the last five years, have the clerks of the general
 9 district courts throughout Virginia had a computerized
 10 system that they could use to enter information about
 11 court records?

12 A Yes.

13 Q And when I say court records, would that
 14 include information about judgments and the appeals,
 15 satisfactions or setting aside of those judgments?

16 A Yes.

17 Q And what types of information can the clerks
 18 of the general district courts throughout Virginia enter
 19 into their computer system over the last five years
 20 concerning judgments and the appeals, satisfactions or
 21 vacating of those judgments?

22 A The first thing they do is they enter the
 23 cases. They can put witnesses in the cases. They have
 24 an ability to set hearing dates. They have the ability
 25 to put in dispositions of those cases. And they can put

1 in whether dismissed, settled, judgments. And later if
 2 we change something, it will allow them to put in
 3 whether there was a satisfaction and what the date was
 4 the court received the satisfaction. And they can also
 5 note appeals.

6 Q Is there a name for the system that the
 7 general district court clerks use to enter this
 8 information? What do you call the system that you use?

9 A The general name for it is CAIS, Computer
 10 Automated Information System, but that has multiple
 11 parts. The case management system would be general
 12 district court case management system, and it has the
 13 ability to enter criminal data, traffic data and civil
 14 data.

15 Q Is the general district court case management
 16 system the computer system that the clerks of the
 17 general district courts in Virginia would use to enter
 18 information about judgments and the dispositions or
 19 termination of those judgments?

20 A Yes.

21 Q Is the information that the general district
 22 court clerks throughout Virginia would enter into the
 23 general district court case management system available
 24 over the internet?

25 A Some of the information is available over the

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Page 11

1 internet.

2 Q If you would, please just tell us how
3 information from the general district court case
4 management system came to be available over the
5 internet.

6 A Okay. Years ago we purchased a used processor
7 and disk drives, and we would copy the data each night
8 from a production machine which is what the courts use
9 to a second machine, and then we made that information
10 available to the people on the internet. And it went
11 through our web site. And that data is limited and
12 that's not the official record of the court.

13 Q When did the internet access first become
14 available or go on line?

15 A Probably around 2000, in that, in that era. I
16 don't have the exact date, but it's been up about ten
17 years.

18 Q And do you have a name for that system that
19 delivers information from the general district court
20 case management system through the internet?

21 A No. It's just, it's just the internet
22 portion.

23 Q And is access to the internet portion made
24 through the website of the Supreme Court of Virginia?

25 A That's correct.

1 Q Are there any other portals for that
2 information other than the Supreme Court of Virginia
3 website?

4 A No, other than vendors that have copies of
5 that data.

6 Q Do the circuit courts in Virginia also have
7 their own case management system where they can enter
8 information about judgments and the dispositions of
9 those judgments?

10 A Yes.

11 Q And is there a name for the circuit court
12 system, or is it just called the circuit court case
13 management system?

14 A Circuit court case management system.

15 Q And when information became available through
16 the Virginia Supreme Court website around 2000, did that
17 include information from the general district courts and
18 also the circuit courts or just one of the two?

19 A At first the information was from the general
20 district courts, and later we made the circuit court
21 data available. But the clerks have to opt in to
22 include their data. So not all circuit court data is on
23 the internet. If a clerk doesn't want their data shown
24 on the internet, then we don't put it up.

25 Q Do you have a rough idea for what percentage

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1 of circuit court clerks have opted in to use the web to
2 make their information available?

3 A It would be an estimate. I don't have the
4 exact number. There's probably only around 20 or 25
5 that don't have it, but I'd have to check the number. I
6 don't know that number off the top of my head. I could
7 get it for you but I don't know it.

8 Q Now, you created or were primarily involved in
9 creating the web-based court information for the Supreme
10 Court of Virginia website; is that correct?

11 A No. I don't create the data. I work on
12 procuring the, getting the personnel, getting the people
13 to do the work, but I didn't create it by myself. I
14 mean, it was an idea and I guess I fostered the idea by
15 getting the other, the additional machine. But that's
16 about what I did.

17 Q Okay. If you would, just describe what your
18 role was in creating the web-based information through
19 the Virginia website that went on line around 2000 and
20 just all the steps that were required to get that up and
21 running.

22 A Well, first we had to procure the money to get
23 that. One of the things we wanted to do was make it so
24 that it started a project with the law, with the bar
25 because they wanted to be able to see court data and we

1 also wanted to make the public see court data so that
2 people who had a case would be able to look that case
3 up, know what their date was, as well as attorneys and
4 the public, because people would not know what day
5 they're supposed to appear. They would have lost their
6 summons.

7 And then later we started a pilot project
8 which would allow you to prepay a traffic ticket on the
9 web. And so it was basically if you want to know
10 something, general information about the court, you
11 could go there and look it up. And you can only look
12 the data up by court. You can't look it up by defendant
13 across the state. You have to know which court the data
14 is in. And so it was made -- that's how the data was
15 made. It was made -- just the way we do it, it's not
16 indexed across the state. It's indexed by individual
17 courts. And we gradually added courts to it.

18 And then we changed something in it now that
19 we can replicate the data. When we moved to DB2, which
20 is a different database, we can put that data out the
21 same day instead of overnight.

22 Q When did you move to DB2?

23 A It depends on which system, but it was about,
24 for general district, it was about 2007.

25 Q And what is the difference between DB2 and the

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1 old system that you were using?

2 A Well, the old one was going to go out of
3 support. That's called DL1. That's the old database.
4 And the new one is DB2. And one of the big advantages
5 of DB2 is you can have other indexes, but it's supported
6 and DL1 is not going to be supported. It's the big
7 thing, you have to move to it, but the other one isn't.

8 One of the advantages is, it allows you to
9 replicate the data. So instead of having to take copies
10 every night and put them, you can replicate the data and
it can look at -- the second database can look at the
12 first database and get the changes that were made so you
13 didn't have to replicate -- you'd have to back up the
14 data and restore it on the internet machine every day.

15 Q Let's -- I want to try to create a flow chart
16 of information so that I understand how it moves through
17 the system. So let's take a matter in the general
18 district court. You're aware, sir, that in the general
19 district court, oftentimes an action can be initiated by
20 the filing of what's called a warrant in debt; is that
21 correct?

22 A That's true.

23 Q Let's assume that a warrant is filed in the
24 general district court which results in a judgment being
25 entered. If you would, tell us how that information

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1 flows from the courtroom to the general district court
2 case management system to the web system that you
3 described that was launched in 2000.

4 A Okay. The warrant comes in, a case number is
5 assigned to each warrant. The parties are entered. If
6 there are attorneys, those are entered, the data entry
7 is done. For every case that's entered, a hearing date
8 has to be set. Once the hearing date is set, a
9 courtroom's assigned. A judge is assigned. And it's
10 set for a time.

11 In civil cases, there are continuances, quite
12 a few continuances a lot of times, so the cases are
13 continued from one day to another day, maybe to the
14 second or third day. And on that day a hearing is held.
15 And if the judge enters a judgment or dismisses the
16 case, that's written on the papers, usually signed by
17 the judge. There's a docket sheet that's there; they
18 put it on a docket sheet. There's a clerk in the court
19 who can record the information while they're in court at
20 a terminal, or it can be done in the clerk's office by
21 the papers later that day or the next day.

22 Once the data is in the machine in the first
23 computer, then that night, until we had DB2, the data
24 would be copied to the internet machine so it's
25 available. Not all the fields that are in the case

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Page 17

1 management system are available on the internet. So you
2 can't look at somebody's address. Personal information
3 is not on the internet.

4 Q And with DB2, the main difference was that
5 instead of waiting until that night so that information
6 could be loaded from the general district court case
7 management system to the web system, it's automatic?

8 A Yeah.

9 Q What information -- you mentioned that no
10 address or personal information would appear on the
11 website. Is there any other information that would be
12 available through the general district court case
13 management system that would not be available through
14 the court's website?

15 A Remarks. Most of the information is
16 available. Remarks are not. That's about -- there may
17 be some other fields that aren't there but I'd have to
18 do a comparison. It's a, it's a general abstract of the
19 case is what really is on the internet. If you know
20 something about the case, you can go and look at it.
21 And that's primarily what it is.

22 Not all the information about the case is on
23 the internet. There's no personal information on there.
24 And if you want the detailed information, then you have
25 to look at the court papers.

1 Q And no one from the Supreme Court of Virginia
2 actually goes and looks at the actual court papers that
3 are filed in the various general district courts or the
4 circuit courts for use in preparing the information
5 that's available on the website; is that right?

6 A No one in our office enters data for them.
7 They enter their own data on that system.

8 Q Right. And would you agree that if one of the
9 clerks or other personnel that are entering this
10 information at the general district court level or the
11 circuit court level make an error in what they enter
12 into their computer system, then that error will also be
13 reflected in the information that's available on the
14 supreme court website?

15 A That would be correct.

16 Q Now, have -- let me show you what we will mark
17 as Exhibit 1 to your deposition.

19 (Mittendorff Deposition Exhibit Number 1
20 was marked for identification)

22 MR. LOVE: And at this point we will go ahead
23 and designate this deposition as subject to the
24 protective order in this case since we're dealing
25 with some personal information of a consumer.

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1 BY MR. LOVE:

2 Q Have you ever seen this document before?

3 A No.

4 Q Do you recognize this generally as a warrant
5 in debt that would be filed in a general district court
6 in Virginia?

7 A Yes.

8 Q Have you ever reviewed any records of Donna
9 Soutter, the plaintiff in this case, prior to today?

10 A On the web, yes; the actual documents, no.

11 Q All right, sir. Have you ever seen a copy of
12 Ms. Soutter's credit file?

13 A No.

14 Q You've never spoken to Ms. Soutter, have you?

15 A No.

16 Q In looking at this document that's been marked
17 as Exhibit 1, can you help us understand from your
18 knowledge in working with public records in Virginia the
19 type of information that appears here and what's
20 reflected?

21 First of all, I think you said this is a
22 warrant in debt, this is how a lawsuit would be started
23 in a general district court in Virginia; is that
24 correct?

25 A Yes.

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1 A Yes.

2 Q And it also appears that the Court awarded
3 \$48 in costs against Ms. Soutter; is that correct?

4 A That's correct.

5 Q And then down below we see some handwritten
6 notes, and one of them says "3/20/08, see order J
7 vacated, case dismissed without prejudice." Do you see
8 that part?

9 A Yes.

10 Q Does that mean that on 3/20/2008 the Court
11 entered the notation that the judgment had been vacated
12 and case dismissed without prejudice?

13 A I wouldn't know. I mean, what I'm reading is
14 that, but I don't know who put it there.

15 Q Certainly. That's how you would generally
16 understand that a court could make that type of note in
17 a record like that; is that fair to say?

18 A Yes.

19 Q Okay. So this is the type of record that
20 would be generated, going back to our flow chart
21 discussion, this is where the trail would begin, so to
22 speak? When a document or a record like this is entered
23 in the record of a general district court or a circuit
24 court in Virginia, something like this would have to
25 happen before any information was entered about a case

1 Q And the way it would be started is the person,
2 the plaintiff in a case, would type in the information
3 here or write in the information concerning the claim
4 that they were making against a defendant; is that
5 right?

6 A That's correct.

7 Q And you mentioned earlier that in general
8 district courts, there are often several hearing dates
9 that are set. And over on the right-hand side of the
10 first page, it says hearing date and time, and it has a
11 number of dates; right?

12 A That's correct.

13 Q Is that the section of a warrant in debt where
14 a court would write in all the different hearing dates
15 that apply to a particular case?

16 A That's correct.

17 Q And then under case disposition in the bottom
18 left-hand side, is that the area where a court would
19 write the final disposition of a case?

20 A Yes.

21 Q And for this particular judgment -- or, excuse
22 me. For this particular warrant in debt, under the case
23 disposition section, does it indicate that a judgment
24 was entered against Ms. Soutter for \$14,403.79 with an
25 interest rate at 9.99 percent from February 22 of 2007?

1 into the general district court case management system;
2 is that right?

3 A That's correct.

4 Q And from here, let's go to the next step. The
5 next step would be the clerk of the general district
6 court or a circuit court would enter information about
7 the events that are shown in these documents, like
8 what's been marked as Exhibit 1, into the general
9 district court case management system; is that right?

10 A That's correct.

11 Q Or if we were in circuit court, then a circuit
12 court clerk would enter information about its case into
13 the circuit court case management system; right?

14 A That's correct.

15 Q Let me show you what we'll mark as Exhibit 2.

17 (Mittendorff Deposition Exhibit Number 2
18 was marked for identification)

20 BY MR. LOVE:

21 Q Can you identify what's been marked as Exhibit
22 2?

23 A It's a screen print of the case management
24 system.

25 Q And is this a screen print for Donna Soutter's

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1 lawsuit in the Richmond General District Court?

2 A Yes.

3 Q And are you familiar with this type of screen
4 shot and the information contained in this type of
5 screen shot?

6 A Yes.

7 Q If you would, just walk us through this
8 document and tell us what it reflects about Donna
9 Soutter's case.

10 A Okay. If you look at the original one, you
11 could tell there was a judgment, and that hearing date
12 occurred on 1/29. And that's, that's the number 05
13 hearing here. So on that day there was a judgment
14 entered. On 03/20/08 they had a re-hearing of some
15 kind, and this was amended to be that the case was
16 dismissed.

17 Q And the person who entered this information
18 that's reflected on this exhibit would have been an
19 employee of the Richmond General District Court; is that
20 correct?

21 A Civil court, yes.

22 Q The civil division of the Richmond General
23 District Court. And going back to our flow chart, this
24 document reflects the second step in the process, the
25 first step being the events that happened in the court

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1 A That's correct.

2 Q And if you look in the upper right-hand corner
3 of this document, you'll see in bold the letter "I." Do
4 you see that?

5 A Uh-huh.

6 Q What does that letter "I" indicate?

7 A Actually, it's where the case disposition is,
8 but the "I" means that means the case has been
9 dismissed.

10 MR. KUGELMAN: I think he's talking about the
11 upper right here. Is this correct, Tony
(indicating)?

12 BY MR. LOVE:

13 Q Yes, sir.

14 A Okay. That's dismissed for Donna Soutter.
15 That's the judgment for her.

16 Q All right. And the "I" that you were looking
at when you spoke earlier is actually right in the
17 middle on the top where it says JI; is that right?

18 A Right, plus the other one that's down in the
19 lower left where it says case disposition. That's the
20 one I look at first.

21 Q Okay. And those three Is that are reflected
22 on Exhibit 2, that's all information or codes that would
23 have been entered by an employee of the Richmond General

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1 and a judgment or some other action occurs, the second
2 step being that an employee of the Richmond General
3 District Court civil division enters information about
4 those events into its case management system; correct?

5 A Right. You're just missing one. This is
6 after the re-hearing, but you're missing what it looked
7 like before the final, before the March 20th. This is a
8 screen shot of March 20th, and you don't have the one
9 from January 29th, '08; okay? But it would not have
10 shown that last hearing. But other than that, you're
11 correct.

12 Q Okay. In other words, what you're saying is
13 there could be, there's usually -- there could be a
14 screen shot that reflects the events that occurred at
15 each separate hearing?

16 A That's correct.

17 Q Okay. But this screen shot that's been marked
18 as Exhibit 2 reflects what happened at the last hearing
19 in this case?

20 A That's correct.

21 Q And what happened at the last hearing is the
22 hearing was held and then an employee of the general
23 district court entered information about that last
24 hearing, and what they entered was that the case had
25 been dismissed; is that correct?

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1 District Court after this final hearing?

2 A That's correct.

3 Q And the "I" -- these employees of the general
4 district courts use codes to indicate certain events
5 that occurred; right?

6 A That's correct.

7 Q And they use codes so they don't have to type
8 out the longer verbiage of what happened; right?

9 A That's correct.

10 Q And an "I" code means dismissed; is that
11 right?

12 A That's correct.

13 Q Now, there are other codes that could have
14 been entered following this disposition of this case in
15 March of 2008; is that right?

16 A You mean that were entered after this?

17 Q Well, let me rephrase the question. When an
18 employee of the Richmond General District Court or any
19 district court throughout Virginia goes to enter this
20 information after a hearing about this case or any other
21 case, there are a number of codes available to them that
22 they can use to describe the events that occurred in the
23 hearing; is that fair to say?

24 A That's correct.

25 Q Okay. "I" is one of the codes, and "I" means

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1 dismissed?

2 A Correct.

3 Q One of the other codes that an employee could
4 use is a code for appealed; is that right?

5 A That's noted. It's not -- I don't believe
6 there's a code for appeal. It would be noted in the
7 bottom, down on the bottom where it says -- there's a
8 place on the -- the appeal noted is located on the
9 bottom of it, of the form. Like it says bankruptcy,
10 appeal noted, appeal perfected.

11 Q Okay. You're talking about the section that
12 says "APPL noted"?

13 A Right.

14 Q And "APPL perfected"; correct?

15 A Right.

16 Q And we'll come back to discussing appeals in a
17 little while. But in the meantime, let's take a look at
18 what's been marked as Exhibit 3.

19 (Mittendorff Deposition Exhibit Number 3
20 was marked for identification)

21 BY MR. LOVE:

22 Q Can you identify that document, sir?

23 A It's a training tool that's used for courts so

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1 are reflected on Exhibit 3 down in the box that we just
2 looked at, where it says "I-dismissed"; is that right?

3 A That's correct.

4 Q And when the employees of the general district
5 court enter the information that's shown on Exhibit 2,
6 they had available to them the option to enter code A,
7 vacated; is that right?

8 A That's correct.

9 Q But they didn't choose A, vacated; instead,
10 they chose I, dismissed; is that correct?

11 A That's correct.

12 Q Now, does someone from your office conduct the
13 training for the clerks of the general district courts
14 and the clerks of the circuit courts on how to code this
15 type of information into their case management systems?

16 A Yes.

17 Q Who does that actual training?

18 A Judicial Services Department.

19 Q Is there a particular individual that does
20 that?

21 A There are a lot of individuals that do that.

22 Q Okay. They just travel throughout the state
23 and conduct this training?

24 A A lot of the training is done in our office.

25 Q Okay. So the clerks actually have to come to

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1 they know what case -- what to enter on a case
2 management entry screen.

3 Q All right, sir. And if you take a look at
4 page A5 of that document, it's in the upper right-hand
5 corner.

6 A Okay.

7 Q Is page A5 a page from this training document
8 that's provided to the employees of the general district
9 courts that shows them how to code civil hearing
10 disposition information?

11 A That's correct.

12 Q And if you look in the bottom left-hand corner
13 of this page, there's a box. And it has the letters and
14 the words A-vacated, P-plaintiff, D-defendant,
15 I-dismissed, N-nonsuit, U-not found/unserved, and
16 O-other. Do you see that box?

17 A Uh-huh.

18 Q Are those the codes that employees of the
19 general district courts can use when they enter
20 information into the case management system to show the
21 dispositions of cases in their courts?

22 A That's correct.

23 Q And if we go back to Exhibit 2 and look at the
24 three "I" codes that appear on the first page of that
25 document, those "I" codes are the same "I" codes that

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1 you?

2 A Right.

3 Q How long has this document been out that's
4 marked as Exhibit 3?

5 A It would be out for years. I mean, I don't
6 know the exact date. It's basically a screen shot of
7 the -- and it's been probably in use for at least ten
8 years or something. I don't know the exact date when it
9 was done. This is 7/10, so it was revised in July of
10 this year. So they may have added a code or something,
11 but, so I can't tell you exactly. But it's a training
12 tool is what it is.

13 Q Based upon your review of Exhibit 2 and your
14 knowledge of the court systems, Donna Souter's judgment
15 was never marked as vacated, it was marked as dismissed;
16 is that correct?

17 MR. BENNETT: Objection, leading question,
18 also assumes facts not in evidence. The witness
19 has already said that the only screen print you're
20 showing is the ultimate one, not necessarily the
21 one when it was noted vacated before, thereafter
22 the dismissal with prejudice was entered.

23 MR. KUGELMAN: You may answer the question.
24 It's all right.

25 THE WITNESS: What's shown here on this screen

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1 print is dismissed. Was there something else in
 2 between? I can't -- I don't know. I don't have
 3 that. Was there something after this date? I
 4 don't know.

5 One thing about case management that everybody
 6 needs to understand is when you take a picture of
 7 something, it's the picture that this was on that
 8 particular day. It can be changed. So I don't
 9 even have the date this screen shot was made. But
 10 if you knew the date that screen shot, that's the
 11 way it appeared on that day. Ten days later, two
 12 days later, somebody makes a change on it, you get
 13 a different -- there will be something out there
 14 that's different.

15 And I can't -- usually they're not going to
 16 make a change unless something occurs. That's not
 17 usually done unless there is a mistake, okay?

18 So...

19 BY MR. LOVE:

20 Q How did you get this -- is this a screen shot
 21 that you obtained?

22 A No. You just gave it to me.

23 Q Okay. Well, did it initially come from --
 24 have you, have you ever requested or obtained any screen
 25 shots from the Richmond General District Court

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Page 31

1 concerning Donna Souter's case?

2 A Yes.

3 Q Is this one of those screen shots?

4 A Yes.

5 Q Okay.

6 A Not -- I'd like to say, I can't tell you if
 7 it's the one I have, but it is one that I recognize,
 8 appears to be exactly the same as the one I have.

9 Q Okay. And would it be possible to go back and
 10 get screen shots from all these different hearing dates?

11 A No.

12 Q You can only get a screen shot for the most
 13 recent activity?

14 A That's correct. Unless you got one earlier,
 15 you can't, you can't replace that. It's like you took a
 16 picture and now you have it. Something changes and now
 17 you've got another picture. But you can't recreate the
 18 screen shot for 2008 or 2007. You can't do that. The
 19 system has been changed.

20 Q Okay. But what we can say based on Exhibit 2
 21 is that as of March 20, 2008, this was being reported as
 22 a dismissed lawsuit; is that correct?

23 A Right. And it should be -- yeah. It
 24 matches -- there is a date on the, on Exhibit 1 that
 25 says this is March 20th, '08, and that matches with

Page 32

Page 33

1 this. So as of that date, this matches with your
 2 Exhibit 1.

3 Q And if you go back to Exhibit 1 and go to the
 4 next-to-last page, does this appear to be an order that
 5 was entered in Ms. Souter's lawsuit?

6 A Yes.

7 Q And if you look at the next-to-last sentence,
 8 it says "ordered that the judgment entered against Donna
 9 K. Souter in the captioned matter be, and is hereby,
 10 set aside and dismissed without prejudice." Do you see
 11 that part?

12 A Yes.

13 MR. LOVE: All right. Could we go off the
 14 record just for a moment?

15 (Discussion off the record, Mittendorff Deposition
 16 Exhibit Number 4 was marked for identification)

17 BY MR. LOVE:

18 Q All right, sir. Can you identify what's been
 19 marked as Exhibit 4?

20 A Okay. This is copies of screen shots of what
 21 is on the internet machine for -- and it shows first,
 22 the first page is the index to cases in the Richmond
 23 General District Court civil case, and it shows two

1 cases for Ms. Souter. And those cases are the one you
 2 have as Exhibit 1, and a second case that's 02, or it's
 3 actually a suffix case. And the second page is a screen
 4 shot of the actual case, the A2-00, shows the file date.
 5 And it shows the last date is March 20th, 2008,
 6 reopened, re-hearing and has a judgment of case
 7 dismissed. So it matches what's on the warrant in debt
 8 which was Exhibit 1.

9 Q All right. And is Exhibit 4, does it appear
 10 to be a copy of the screen shot for Ms. Souter's case
 11 from September of this year?

12 A It would be September of 2000 -- the case was
 13 September, started in September 2007, correct. It
 14 wasn't this year. And the screen print was made this
 15 year. Okay.

16 Q And so that is, that represents the
 17 information for Ms. Souter's case, the one that we're
 18 talking about in this lawsuit, as it appeared on the
 19 supreme court website in September 2010?

20 A Yes.

21 Q And in September of 2010 it was still being
 22 reported as dismissed; is that correct?

23 A That's correct.

24 Q And it wasn't being reported as vacated;
 25 correct?

1 A That's correct.

2 Q In the coding of the documents for public
3 records in the general district courts of Virginia and
4 the circuit courts of Virginia, going back to the codes
5 that are used, do the clerks make a distinction between
6 vacated and set aside or is that generally treated as
7 the same thing?

8 A I can't answer that question. I mean, if the
9 order -- if the way the order is written or the way the
10 judge says it, the clerk records it that way. The
11 clerks aren't allowed to change it. So if somebody says
12 it's dismissed, then it's dismissed. They wouldn't put
13 vacated unless the judge said vacated, normally.

14 Now, I can't speak to how they do it in one
15 court versus another court. The codes are there. And
16 I'm not there when they do it so I can't tell you how
17 they do it. I don't know if that helps you any but, I
18 mean, everything says dismissed here and they put
19 dismissed, and the order said dismissed.

20 Q Based on your knowledge of court records in
21 Virginia, is there a difference in Virginia between a
22 vacated judgment and one that's set aside?

23 A I can't answer that.

24 Q Okay. There's not a separate code here on
25 Exhibit 3, on page A5 of Exhibit 3 for a set-aside

1 judgment, is there?

2 A Let me get the right one (perusing document).
3 No. There's vacated and dismissed, but set aside is not
4 shown.

5 Q All right, sir. Now, that document that we
6 just looked at, Exhibit 4, going back to our discussion
7 earlier of the flow of this information and building a
8 flow chart of this information, that represents the
9 final step in our flow chart; right?

10 It goes from the actual documents in the court
11 that would be in the court file which are represented in
12 Exhibit 1, which is the warrant in debt and the order
13 and those types of documents. That's step one. Step
14 two is when the clerk of the court enters it into the
15 general district court or circuit court case management
16 system, and that can be reflected in documents like
17 Exhibit 2, which is the screen shot?

18 A Uh-huh.

19 Q And then finally, it shows up here on the
20 Virginia Supreme Court website with select information
21 about a case that's available to the public through the
22 court's website. Is that the final step in our flow
23 chart?

24 A That's correct.

25 Q I want to ask you some questions now, sir,

1 about public record vendors in Virginia. Now, are you
2 aware that -- do you know what a public record vendor
3 is?

4 A Basically.

5 Q Okay. What is your basic understanding of
6 what a public record vendor is?

7 A Some vendors gather data from courts and they
8 report it. Some try to put it on their own websites.
9 Some are good at it and some are not so good at it. But
10 anyway, that's what people do. Some people, what we
11 call them I guess in the courts are some people are list
12 makers. They go to court and they get lists, and that's
13 what they do. Other people -- we used to report data.
14 But the data on their website is one way for somebody to
15 get information. And if they want more information,
16 they'd have to go to the court to look that up. But
17 that's what the data is used for.

18 Q All right, sir.

19 MR. LOVE: And just for the record, I move to
20 strike the portions that are nonresponsive.

21 MR. BENNETT: I'm sorry?

22 MR. LOVE: Move to strike the portions that
23 are nonresponsive. The --

24 MR. BENNETT: Which, of course, you can say.
25 He says I move to strike the portions that are not

1 responsive, but the typed transcript --

2 BY MR. LOVE:

3 Q Are you aware of a public records vendor
4 called LexisNexis?

5 A Yes.

6 Q What is your knowledge of LexisNexis?

7 A They are a big company. They do -- well, they
8 do keep records. Okay. They received records from us
9 and they know how to use the web. And that's about what
10 I could tell you about them. Anything else would be --
11 okay.

12 Q All right. Did the State of Virginia through
13 your office at some point provide information about
14 public records, including judgments and dispositions of
15 judgments, to LexisNexis?

16 A That's true.

17 Q And could you just explain how that worked,
18 when it started and what the process was, how the
19 information was transmitted?

20 A Okay. We have a -- we had. We no longer have
21 that. But we could provide you dispositional
22 information for civil cases. And I'll just speak to
23 civil since this is what that's about. And we would
24 send, based on somebody's request, we would send monthly
25 dispositions. And the data we would send is equivalent

1 to an abstract of judgment. And let me explain what
2 that's -- why we did that.

3 Abstracts of judgments are placed on the
4 court's calendar for list makers, it used to be placed
5 on there for list makers to gather that information.
6 And at one time, sometime long ago, people asked if we
7 could automate that portion so that list makers wouldn't
8 have to just copy the data that's on the abstract of
9 judgments. So that's what we did.

10 Abstracts of judgments are based on a judgment
11 or an other judgment. So the only dispositions that
12 appear on abstracts of judgments are cases in which the
13 defendant, there was a judgment entered against the
14 defendant or an other judgment was made. And so those
15 would be reported on those, on those cases.

16 And so to get it -- to make the data better,
17 because if a court was -- didn't complete something by
18 the end of the month, we started sending two months. So
19 you would get two months each month, try to make sure
20 that -- and you could request updates, which means you
21 could request a whole year's worth of data to refresh
22 your database. Because if changes were made on the
23 record, you wouldn't have those unless you went on line
24 and looked at those records.

25 Q When did the State of Virginia through your

1 office start providing this information to public
2 records vendors in this manner approximately?

3 A Probably in around 2000 or so, maybe a little
4 earlier than that. I don't know the exact date when we
5 started doing it.

6 Q And when did you stop providing it in this
7 manner?

8 A The last records we sent were March of 2009.

9 Q How was the information transmitted to public
10 records vendors?

11 A By cartridges.

12 Q Cartridges?

13 A Computer cartridges.

14 Q Were those sent by overnight mail or --
15 A UPS.

16 Q Did the cartridges contain information about
17 new judgments that were entered in the district courts?

18 A Yes.

19 Q Did the cartridges contain information from
20 both the general district courts and the circuit courts
21 or just the general district courts?

22 A You could get whichever one you wanted. If
23 you wanted circuit court, you could get circuit court.
24 If you just wanted general district, you could get
25 general district.

1 Q All right, sir. And you mentioned earlier
2 that some of the circuit courts have elected not to
3 participate in the web information that's now available.
4 Did some circuit courts also opt out of participating in
5 providing information that could be included in
6 providing those computer cartridges?

7 A No.

8 Q So that included all circuit courts?

9 A That's correct.

10 Q Did the computer --

11 A Only the ones on case management, less the
12 three circuit courts that are not on the system.

13 Q Yes, sir. So the information that was
14 included on those cartridges came from the case
15 management systems of the general district courts and
16 the circuit courts in Virginia?

17 A That's correct.

18 Q Now, how would your office extract the
19 information from the case management systems of the
20 general district courts and the circuit courts to
21 include on this information that was on these computer
22 cartridges?

23 A We do it by hearing date. So if you're going
24 to run for, say, January 2009, you're going to run all
25 the hearing dispositions that occurred in which a

1 judgment was ordered in that period of time. And we're
2 only talking civil now. So if judgments were entered in
3 January for hearings, then we would report those. And
4 it's similar to the screen shots that you have here.

5 Q Did the information that was included on the
6 computer cartridges also include new satisfactions of
7 judgments?

8 A Yes, if the judgments had been satisfied when
9 the tapes were made. So if you satisfied the judgment
10 within a month, then yes. To get it later, you would
11 have had to ask for the tapes that covered the hearings
12 that were done. In other words, the way it was made was
13 the same thing you'd see on an abstract of judgment. So
14 if you got a picture in January of it, it might not be
15 satisfied. But in -- when we ran two months in
16 February, if it had been satisfied, you would see it.
17 If you re-ran it you would see it, or if you went on the
18 web you would see it.

19 But to get the satisfied, you would have to,
20 you would have to either get new data or go look at it
21 on the web.

22 Q Did the information that was provided on the
23 computer cartridges contain information about appeals?

24 A No.

25 Q Did the information on the computer cartridges

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1 contain information about judgments that had been
 2 vacated or set aside?

3 A No.

4 Q I'd like to go back for a minute to Exhibit 3,
 5 please. And if you would, look at page A5. Down in the
 6 bottom left, we talked about the box that contains the
 7 various codes that the court clerks could use to enter
 8 information about cases, and none of those codes says
 9 satisfied, does it?

10 A No.

11 Q How would a court clerk enter information into
 12 the case management system to show that a judgment had
 13 been satisfied?

14 A There is another -- you'd have to look at one
 15 of the other exhibits. It's not shown on this page. If
 16 you look at Exhibit 2 -- oh, yeah. There, it is. I'm
 17 sorry. It is on the bottom of this page.

18 If you look on page A5 at the bottom, there is
 19 a place to put judgment satisfied.

20 Q Yes. It says "JGMT SAT"?

21 A Right. And there is a place there to put a
 22 checkmark or an "x." And there is also another space.
 23 And that's where, if the judgment was satisfied, the
 24 Court could note it and put the satisfied amount in, put
 25 that it had been satisfied. That's where they would put

1 the date.

2 Q Okay. So there's not a code that a court
 3 clerk would use to indicate that a judgment had been
 4 satisfied, there is a different process for that?

5 A Right. They -- because it's usually done at a
 6 different time, they would go back and update the
 7 record. It wouldn't be a hearing. They would just go
 8 in and mark judgment satisfied and put the date they
 9 received the document that the judgment had been
 10 satisfied.

11 Q Okay. And that would have to be done by the
 12 clerk for each case in which a judgment had been
 13 satisfied; correct?

14 A Yes.

15 Q And also --

16 A Let me just clarify one thing. They can only
 17 do it if they received a document from the plaintiff
 18 that the judgment has been satisfied. If they have not
 19 received it, then it still wouldn't show that the
 20 judgment's been satisfied.

21 Q And the reason for that is the only way that a
 22 court will know if a judgment has been satisfied or not
 23 is if somebody advises the court of that fact?

24 A That's correct.

25 Q Okay. Because the court doesn't know whether

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1 the judgment debtor is making payments to pay off the
 2 judgment unless somebody tells the court about that.

3 A Right. There's no way to see if he's making
 4 his hundred-dollar-a-month payment. You don't --
 5 there's nothing between the disposition until the
 6 judgment's satisfied. The court's not keeping records
 7 of how many payments have been made, if payments have
 8 been missed until a plaintiff comes back in, in which
 9 case they could issue a garnishment or something, other
 10 action.

11 Q And for that reason it's possible that a
 12 judgment debtor could have already satisfied a judgment
 13 by paying everything off over a period of several
 14 months, yet it still shows as an open judgment on the
 15 court's records until someone notifies the court of that
 16 satisfaction?

17 A That's correct.

18 Q Now let's talk for a minute about appeals,
 19 because in the box on the left on page A5, there is no
 20 code for appeal; correct?

21 A That's correct.

22 Q So how --

23 A It's on the bottom line. You can note the
 24 appeal and then you can have the appeal's been
 25 perfected.

1 Q Now, explain to me, sir, the difference
 2 between an appeal noted and an appeal perfected.

3 A One would be if somebody wants to appeal, and
 4 the other one is they set the bond up to have the case
 5 heard in circuit court.

6 Q Okay. So are there different date
 7 requirements for that? For example, is one done within
 8 10 days and one done within 30 days?

9 A Usually it's ten days.

10 Q So they can file for the appeal noted within
 11 ten days; is that generally correct?

12 A Yes. I know that's true on criminal. I'm not
 13 sure on civil but I believe it's the same. But I
 14 couldn't say that.

15 Q And so what information would the clerk enter
 16 if an appeal is noted? Would that be a date or a check
 17 or an "x" or something else?

18 A I'd have to look at the screen shot. They'd
 19 enter the date.

20 Q And appeal perfected, same thing, the clerk
 21 would enter the date?

22 A They'd enter the date.

23 Q So is it accurate to say that the manner in
 24 which the clerks record information about these three
 25 different types of dispositions, vacated, satisfied,

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1 appealed, are done in different ways?

2 A Yes.

3 Q There is a code for vacated but there is not a
4 code for satisfied or appeal; right?

5 A That's correct.

6 Q And for satisfied, that information and what
7 they enter into the system for that depends on
8 information that comes from outside the court's records?

9 A That's correct.

10 Q And for appeal, there are two different time
11 periods that could be relevant for appeals, both appeal
12 noted and appeal perfected?

13 A That's correct.

14 Q Let's go back to the discussion of the
15 information that was provided to public record vendors
16 on these computer cartridges that you were talking
17 about.

18 Was the information on those computer
19 cartridges the same information that was in the -- for
20 the types of -- well, strike that.

21 You said earlier that the information on the
22 computer cartridges came from the case management
23 systems in the general district courts and the circuit
24 courts; right?

25 A That's correct.

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1 Q Who was involved in preparing that
2 information, if you know?

3 A Eddie Macon talked to the attorneys, Dave
4 Savage and Mamiko Barnard.

5 Q Did you ever see a copy of the final list of
6 information that was produced?

7 A No.

8 Q Do you know whether Donna Souter appeared on
9 a list of information that was produced?

10 A I do.

11 Q Did she appear?

12 A No.

13 Q And why didn't she appear on that list?

14 A Because the request for information only asked
15 for certain types of cases, and the case that was
16 brought, the subsequent action that was brought, which
17 is the 01, was closed out with an other judgment which
18 was not vacated, and it wasn't satisfied, it wasn't
19 dismissed and it wasn't appealed. And that's the reason
20 it wasn't on there.

21 Q What does that mean, that it was closed out
22 with an other judgment?

23 A Well, okay. That was -- the 01 case which is
24 shown on Exhibit 2, I believe, okay, it shows the case
25 dismissed as other. So what occurred in the court is

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1 Q So if the clerks of the courts made a mistake
2 in how they entered information into the case management
3 system, then the information about that particular case
4 on the computer cartridge would also be erroneous; is
5 that correct?

6 A That's correct.

7 MR. BENNETT: We would so stipulate.

8 BY MR. LOVE:

9 Q Ms. Souter's attorneys in this case requested
10 the state to provide certain information as part of this
11 lawsuit. Are you familiar with that?

12 A Yes.

13 Q Okay. What is your knowledge of the
14 information that was requested by Ms. Souter's counsel
15 in this case?

16 A I believe the cases they asked for were
17 vacated cases, cases dismissed, satisfied and appealed.
18 I'm not sure if they asked for dismissals. Somebody
19 would have to help you with that. But I think there
20 were only three and it was vacated, satisfied and
21 appealed, and maybe dismissal. I'm sorry. I don't know
22 that part.

23 Q And were you involved in preparing that
24 information?

25 A No.

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1 someone asked for a motion to vacate or dismiss the
2 original case, which was a judgment against Donna
3 Souter. And the judge basically agreed with them. And
4 instead of the 01, that particular case shouldn't be
5 dismissed because that would say we're not going to
6 correct the record. So what the judge entered or what
7 they did was they entered favorably for this, which is a
8 judgment. They're saying okay, we approve your motion
9 and we're going to dismiss, we're going to enter a
10 dismissal on the 00 case. So it wouldn't have shown on
11 their list.

12 Q Was that the correct way to do it under the
13 policies and procedures that had been established by the
14 Supreme Court of Virginia?

15 A We don't have a policy on how they should do
16 that. That's one way of doing it.

17 Q Okay.

18 A I can't say -- it was a judgment so it can't
19 be a J, so it has to be an other judgment. There aren't
20 any other codes unless you put vacated. But that was a
21 clerk, a clerk's decision, I guess, who entered it. But
22 they enter it as an O.

23 Q All right. Before information was provided to
24 public record vendors through the computer cartridges
25 that you described earlier, to your knowledge was there

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1 another way that public records would pick up
 2 information from the court about dispositions of
 3 judgments?

4 A List makers.

5 Q What do you mean by list makers?

6 A They go to the court and they get the
 7 information from the court.

8 Q Do you mean list makers being a company?

9 A No. Some are. Some are companies that, like
 10 Lexis probably has list makers. A lot of companies sub-
 11 out work to somebody who goes to courts and looks
 12 judgments up for them. Like if there's a question on a
 13 judgment, they go and look at the court papers. So
 14 that's what list makers do. They basically sell their
 15 services. They go to court because they're local, and
 16 they research data and they provide that data back.

17 Q Have you ever heard of the word "strike" used
 18 by any of these court clerks to describe a disposition
 19 of a judgment?

20 A I've heard the word "strike," meaning -- it
 21 probably means they -- I don't know exactly what they're
 22 doing when they do that. So I don't know how that word
 23 would apply in a legal term, okay? So I couldn't answer
 24 that.

25 Q To your knowledge did any of the clerks of the

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1 general district courts ever put disposition documents
 2 concerning judgments into a box that would be made
 3 available to the public record vendors?

4 A Yes. That's the abstract of judgment. That's
 5 how we created what we give to the vendors, is an
 6 abstract of judgments. And most people aren't concerned
 7 with the ones that are settled or dismissed. They're
 8 primarily interested in the ones that have a judgment or
 9 an other judgment, something occurs in the case, not the
 10 settlements. Those cases are not of interest to most
 11 people.

12 Q All right, sir. Let me show you what we'll
 13 mark as Exhibit 5.

14 (Mittendorff Deposition Exhibit Number 5
 15 was marked for identification)

16 BY MR. LOVE:

17 Q Can you identify this document?

18 A No. I'll have to read it more. I've never
 19 heard of the case, I don't think.

20 Q When you say abstract of judgment, is this the
 21 type of document that you're talking about?

22 A No.

23 Q If you look on this document, it has two

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1 stamps on it. One says "judgment of," and then it gives
 2 a date, "is set aside and case disposed of as follows,"
 3 and then it has some handwritten notes. And there's
 4 another stamp that says "on" and then it gives a date
 5 and it says "strike from your records, Sandra C. Blount,
 6 Clerk," and then a deputy clerk's signature. Do you see
 7 those two stamps?

8 A Yes.

9 Q To your knowledge, is this the type of thing
 10 that a court clerk might put in a box for collection by
 11 public record vendors, or do you have knowledge of that?

12 A I don't have knowledge.

13 Q Okay, sir. Have you ever heard of a report
 14 called a judgment satisfied report?

15 A Yes. That is when -- I think there is a
 16 report you can run, that we could run for the clerks if
 17 they ask for one. But it's, it's -- I don't know if
 18 people make it available. I don't know, they don't have
 19 to run it. Sometimes it's used to check on stuff. So I
 20 can't, I can't speak to that.

21 Q When the information on computer cartridges
 22 was made available to public record vendors, did the
 23 public record vendors pay for that service?

24 A Yes, they did.

25 Q And that process has been stopped now; is that

Page 53

1 right?

2 A That's true.

3 Q And to your knowledge, since the information
 4 on computer cartridges is no longer being sent to public
 5 record vendors, do you know how public record vendors
 6 are obtaining that same type of information now?

7 A They get information off the web.

8 Q Is the information that's on the web the same
 9 information that was made available on the computer
 10 cartridges?

11 A No.

12 Q How is it different?

13 A It doesn't have address information.

14 Q Aside from address information, are there any
 15 other substantial differences between the information on
 16 the web and the information that was provided on the
 17 computer cartridges?

18 A I don't think there would be many, but I
 19 haven't done a comparison of all fields. So it's close.
 20 I mean, I can get a general information about the case
 21 from what's on the web versus what's on the cartridges.
 22 I can't say.

23 MR. LOVE: All right. Those are all the
 24 questions I have. Thank you.

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1 E X A M I N A T I O N
2

BY MR. BENNETT:

3 Q Sir, my name is Leonard Bennett. Actually, I
4 haven't shaken your hand. I don't want to be rude.
5 Good to meet you in person.

6 You and I spoke, maybe to your regret now,
7 months ago by telephone if I recall; is that correct?

8 A I don't recall the conversation, but okay.

9 Q The -- you understand the allegation in this
10 case is that -- well, let me proffer to you what the
11 allegation in the case is and ask what knowledge you
12 have as to that.

13 The allegation in this case is that the most
14 accurate information available on court records,
15 judgments and any disposition after judgment is in the
16 actual courthouse where the records are. And the
17 allegation is that by automating this process, the
18 significant number of post-judgment changes that would
19 have, in a credit reporting context, been favorable to
20 the consumer, satisfactions, appeals or vacates or
21 anything that wipes away the judgment, were missed; that
22 the credit bureaus regularly, systematically picked up
23 the judgment event and irregularly and less than
24 systematically picked up the post-judgment events.

25 MR. LOVE: Object to the form.

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1 clerk. And that is on every invoice that went with
2 every copy.

3 Q So LexisNexis, for example, when it would have
4 received invoices about the Virginia civil data, would
5 have received that disclaimer or that caution?

6 A That's correct. Just like if you go on the
7 web, it says on the web this is an abstract of a case,
8 it's not the official case on the web. For the official
9 information, you have to go to a court.

10 Q To the courthouses?

11 A To the courthouse.

12 Q When I -- I've only been practicing since '94,
13 which is getting to be longer than it was ten years ago,
14 but -- and at the time I grew up practicing in general
15 district court in Newport News. The public record
16 vendors or list makers or whoever these individuals are
17 would come into the courthouse, often with laptops once
18 laptops were around. I remember the big cellphone in
19 the bag. You remember further back than that, of
20 course. But they would come in with laptops and they
21 would review documents.

22 There was a weekly satisfactions report that
23 they would print out and then other -- the satisfaction
24 papers themselves, the orders vacating it and perfected
25 appeals would all be kept in a folder in a file cabinet.

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1 BY MR. BENNETT:

2 Q What knowledge do you have as to this case as
3 to the basic allegations? I understand this isn't your,
4 this isn't your -- you don't have a dog in this fight,
5 as the cliche is, right? But what knowledge do you have
6 as to what allegations have been made?

7 A For one, if you get a new copy of the
8 database, you will get the satisfieds because the
9 satisfieds are in those cartridges. In other words, it
10 gives you another picture of the case later. It doesn't
11 give you the appeals. But the original intent was to
12 create an abstract of judgment, and that's what it did.

13 We didn't do dismissals so it doesn't show
14 dismissals. I know the numbers of how many appeals
15 there are. It's like .4 percent, okay? The number of
16 satisfied is 15 percent, 15 to 16 percent. So I know
17 what those numbers are.

18 But on every invoice that we send out with
19 those, we're not able to ask questions about what you
20 use the data for, who you give it to. We're not able to
21 ask that under freedom of information, so we didn't ask
22 those questions. But we did include in every invoice,
23 we said this is an abstract of the official record
24 that's in the court, depending on your use of the data,
25 you might need to check or you may need to check with a

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1 We picked up this pattern when we asked six, seven years
2 ago -- well, longer than that, before you started
3 selling the lists to LexisNexis -- that why are these
4 folders always full. And the clerks, they actually
5 consistently said, including the Richmond and Petersburg
6 clerks that we've spoken with in this case, that they
7 just, the list makers whose job it was to pick these up
8 never picked them up. And that's why we got motivated.
9 That's questioned. I mean, that's a statement and that
10 doesn't make it part of the record.

11 But with respect to the process for gathering
12 information, prior to the point when bulk data was
13 available, what is your understanding of how
14 post-judgment changes to the judgment would have been
15 made available to what you called list makers?

16 MR. LOVE: Object to the form.

17 THE WITNESS: Well, the biggest one was the
18 abstract of judgment. And we were asked to
19 automate that one because that -- we weren't asked
20 to automate appeals or no one's ever asked us to
21 add additional fields on the jobs that we did to
22 cover the other items.

23 It's difficult for some of them, satisfactions
24 is one, because they occur at different times. So
25 it's really difficult, but it's possible to run a

1 satisfied, a list just like the job we ran for you.
 2 Had someone asked us to run a list, we could have
 3 run a list.

4 BY MR. BENNETT:

5 Q And the list that -- and I wasn't the one who
 6 spoke with Mr. Macon. And I understand it was -- we
 7 have two other employees that Equifax is deposing who
 8 participated in the, sort of the hands-on part of
 9 preparing the data in response to our request; is that
 10 correct?

11 A Correct.

12 Q And who are those individuals?

13 A Dave Savage and Mamiko Barnard.

14 Q Do you supervise those individuals?

15 A No, not directly.

16 Q Not directly. But have you seen the list that
 17 the state produced in our instance?

18 A I saw part of the list.

19 Q And that was for a specific task, as you just
 20 said?

21 A Right.

22 Q For example, if we had asked for individuals
 23 who had a satisfaction noted between -- in 2009, that
 24 small -- that would be a subset, but that could have
 25 been produced?

1 year that it started. It gives a sequential number and
 2 then a dash. And that suffix 01 tells you that this is
 3 part of the original case. It's a subsequent action.
 4 Another subsequent action would be a garnishment. So on
 5 garnishments, they would have been included in the bulk
 6 data as well.

7 Q And on the first page of this Exhibit 2, under
 8 case disposition, on the left middle, that field has
 9 "I"; is that correct?

10 A That's correct.

11 Q And that corresponds with the status case
 12 dismissed; correct?

13 A That's correct.

14 Q At the top right of this document, it says
 15 DEF1, and below that, DEF2. Do you see that?

16 A That's correct.

17 Q This field is when there are multiple
 18 defendants; is that correct?

19 A Yes, that's correct.

20 Q It's possible that you have judgment or a
 21 vacate with respect to one defendant but not the other?

22 A That's correct.

23 Q And that's why you actually have different,
 24 what I'll say status fields available for each defendant
 25 here, and then you have just sort of the overall case

1 A Yes.

2 Q In this instance with Ms. Soutter, the first
 3 page of the judgment disposition record -- and, I'm
 4 sorry, I don't know what it was -- what does the green
 5 sticker say on the bottom?

6 MR. KUGELMAN: Just make sure we have the
 7 right one. Is that it?

8 MR. BENNETT: That's it.

9 MR. KUGELMAN: Exhibit 2.

10 BY MR. BENNETT:

11 Q Exhibit 2, this is, at the top, it has a case
 12 number.

13 A Uh-huh.

14 Q And it then says dash 00. Do you see that?

15 A Yes.

16 Q On the second page of this, it has the same
 17 case number and then it says dash 01?

18 A That's correct.

19 Q In Virginia when we have post-judgment
 20 actions, in this instance a dismissal or a motion to
 21 vacate, but maybe debtor interrogatories or garnishment
 22 summons, how are those noted as connected to or a subset
 23 of the original case?

24 A They get a dash 01. It's a suffix. The case
 25 number basically tells you the court. It gives you the

1 for the case disposition field on the left; correct?

2 A That's correct.

3 Q In this instance, the code for Donna Soutter,
 4 DEF1 at the top right, is also "I"; correct?

5 A That's correct.

6 Q That is, I note from Exhibit 1, page five, the
 7 code for case dismissed?

8 A That's correct.

9 Q Now, if -- let's -- I think you've already
 10 suggested that if you looked at this screen on a
 11 different day than this final output, if the status at
 12 that time was different, the screen would look
 13 different?

14 A That's correct.

15 Q For example, in this instance there was a
 16 judgment that had been entered on the 29th of January.
 17 If you were to look at the screen on the 29th of
 18 January, it would be fair to presume that the case
 19 disposition code would not have an "I" in it?

20 A That's correct.

21 Q Would it have a "P" in it for plaintiff if
 22 judgment were taken in favor of the plaintiff, or is
 23 there a different way that a judgment itself is noted?

24 A No. It would have a "P."

25 Q And the top right corner for Donna Soutter

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1 where it currently says "I," if the record at that time
 2 was for a judgment that was still in favor of the
 3 creditor, the plaintiff, what would that code say?

4 A "P."

5 Q Now, we are going back in time using what
 6 tools are available to try to, from our perspective, the
 7 plaintiff's side, try to fix credit reporting data that
 8 we allege is inaccurate. So that we're not suggesting
 9 that this is -- that the data that you provided is the
 10 best data in the history of data to measure what might
 11 have happened in '06 or '05 or '08. Your data records
 12 the status as of today, the data you produced to us;
 13 correct?

14 A What we just produced on your --

15 Q Yes.

16 A Yes.

17 Q The question Mr. Love asked was if the court
 18 data that had been inputted into the CMS or the court
 19 management system, if the actual mechanical input into
 20 the computer was less accurate than the actual court
 21 record in the clerk's office, your computer wouldn't
 22 have a way to pick up that discrepancy.

23 A That's correct.

24 Q And the only way to have picked up that
 25 discrepancy would actually have reviewed the court

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1 record itself?

2 A That's correct.

3 Q We didn't ask for the "I" fields or the data
 4 we have doesn't include any Is. It doesn't include tax
 5 liens. It doesn't include circuit court data. But is
 6 there any -- would there be any difficulty -- I mean,
 7 there is certainly work required, computer time
 8 required. But had we gone back and requested the "I"
 9 field, is there any technical limitation that the
 10 supreme court case management system would have in
 11 providing that information?

12 A We could do it.

13 Q The --

14 A But like you said before, we could do it, but
 15 it would only be as accurate as whoever put the
 16 information in.

17 Q That's right.

18 A Even your list may have some errors in it.

19 Q That's right.

20 A I can't tell you that.

21 Q In our list, we're trying to compare -- we
 22 also have received from Equifax data of who they are
 23 reporting with judgments, and so we're going to overlay.
 24 And so it's an imperfect process, but...

25 Are you aware of any better means to obtain

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1 the current state of data within the computer systems in
 2 our court system as to the current status of judgments
 3 as of today?

4 That is, going back, we've asked for data
 5 going back for the last decade. Are you aware, is there
 6 any other data source that would be more --

7 A Yeah. You could ask for every case.

8 Q Every case.

9 A And then the problem with your request and
 10 somewhat what's on the cartridges, we create a job, that
 11 creates the abstract of judgment. That's what it was
 12 because that's what people wanted. They didn't want the
 13 dismissals; okay?

14 Q Right.

15 A Now, this is -- and I don't know how many
 16 cases this occurred. It's kind of unusual for a case in
 17 the district court to be later dismissed. I don't know
 18 how many there are but I don't imagine it happens very
 19 often. But the best way to do it would be that we go
 20 through, and every court case has a final hearing. It
 21 wouldn't matter what happened earlier. You'd get the
 22 final hearing. And it's -- and that way you would know
 23 for every case, which one should be included and which
 24 ones should not. Because even if you got a copy of 00,
 25 you would not see a "P" any more in there. You would

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1 see an "I." So it was dismissed.

2 But the problem is, no one ever asked us to
 3 produce a list of all the dismissals. We got, we got
 4 the dispositions that were in the abstract for judgment
 5 file and that's what we provided. If somebody said can
 6 you run all the dismissals, of course. We can give you
 7 whichever way you want to cut it. The problem is,
 8 sometimes you have to think about the problem that
 9 you're trying to solve.

10 And that's one of the things I said before. I
 11 do problem solving. If you tell me the problem, we'll
 12 figure out how we could run the job, because somebody
 13 else trying to figure out how to run the job is going to
 14 probably make some mistakes. Just like the mistake you
 15 made. You missed the one that you wanted because you
 16 didn't ask for J. You just asked for the dismissals and
 17 the other thing. That's why you didn't see the case.
 18 It wasn't on your list.

19 Q Talk to my wife. That's the least of my
 20 mistakes.

21 A Okay. Anyway, well, it's possible to -- if
 22 everybody wanted to fix the problem, we could work to
 23 fix the problem.

24 Q Now, is this also true with circuit court data
 25 for those circuit courts that report to the supreme

1 court system?

2 A We could -- you know, if we ran the data and
3 we ran what it has, we could potentially correct --
4 provide a means to correct. You still have the little
5 problem of did somebody make a data entry error. You
6 know, on the one side people are looking like they
7 didn't vacate it, you put dismissed in, you put in other
8 judgment versus a vacated; well --

9 Q Well, let me talk about that. The vacating,
10 you understand, is the reopening of a case or
11 elimination of the previous final judgment; correct?

12 MR. LOVE: Object to the form.

13 BY MR. BENNETT:

14 Q Is that --

15 A I'm not an attorney.

16 Q Okay. But you can vacate, have a judgment --
17 it's possible to have a judgment vacated and then have a
18 trial later. Let's assume that there is -- a common
19 reason for vacating is that there is no service or there
20 was a mistake in service. They thought that they had
21 service of process on someone and they didn't. So then
22 the judgment could be vacated, later have a trial after
23 service is corrected, and then the creditor plaintiff
24 wins again at that trial and you have a judgment.

25 And another instance could be like this one,

1 where it's vacated, and in addition to being vacated, is
2 dismissed. In circumstances where a judgment is vacated
3 and then later tried again with judgment being entered
4 again in favor of the plaintiff, how would that be
5 properly displayed in the case management system?

6 MR. LOVE: Object to the form.

7 THE WITNESS: That's a combination question.

8 BY MR. BENNETT:

9 Q Sure. Just the last one instead of all the
10 talking stuff that I won't get to use.

11 A Well, in each case, if the case was vacated,
12 the court clerk could enter vacated and there wouldn't
13 be -- at that time, let's suppose it was failed to
14 deliver. In other words, it didn't get delivered
15 correctly, couldn't find the thing and they vacated the
16 case, whatever. It would be vacated. That would be the
17 last action on the case until you got service.

18 When you got service, there would have to be a
19 hearing date. So everything goes by hearing dates. If
20 there is a hearing date set, when you open a case, there
21 is a hearing date. Every case has to have a hearing
22 date. So right now it's an active case if there is an
23 open hearing date.

24 Until you get service, you're trying to
25 schedule it for a date in the future. If you don't get

1 service, then until you get service, you'd have to
2 continue the case because we weren't able to do it, or
3 you could vacate it because you couldn't find them. But
4 in some cases the parties would just come back and put a
5 new hearing date on the case. So it depends on what
6 happens.

7 Yeah, there are ways to handle almost anything
8 that occurs in the court to put a disposition in for
9 that particular hearing. Doesn't close the case out
10 but -- and that's why we have this nifty little thing,
11 we put the hearing dates on the side so we know what's
12 the last thing that happened. But if you go to the
13 file, there is something actually for all those dates.
14 But what principally shows on here is what happens, it
15 just gives you an abstract of the case. It's not the
16 whole case.

17 So yeah, we can put different codes in. And
18 for every hearing, there has to be some action. A lot
19 of times that's just a "C," it's just continued and a
20 new date is set. But there are ways to handle it.

21 Q And if a case is vacated and then later
22 dismissed, what should be reflected in the case
23 disposition?

24 A I can't answer that.

25 Q There's no right answer, is that -- I mean no

1 official --

2 A I can't answer that.

3 MR. LOVE: Object to the form.

4 THE WITNESS: I'm not, I'm not in judicial
5 services. I'm in automation. I could handle it
6 either way you put it in.

7 BY MR. BENNETT:

8 Q Got it.

9 A But I can't tell you the way to do it because
10 I haven't gone to that training session to say, Oh,
11 yeah, that's the way. You'd have to get somebody from
12 judicial services who would give you the procedure.
13 Dave Savage or Mamiko can't answer that question either.

14 Q Got it.

15 MR. LOVE: Can we go off the record just a
16 moment while Mr. Bennett is looking at his notes
17 here?

18 (Discussion off the record)

19 BY MR. BENNETT:

20 Q You have made a couple statements, and I want
21 to delve more into that, about when LexisNexis and
22 other, we call vendors, they vend to the credit bureaus,
23 requested to purchase data from the supreme court

1 system, they never asked to purchase vacated, appealed,
2 or dismissed judgments or dispositions; correct?

3 A No.

4 Q And is that true through today?

5 A No one's asked for that except for you.

6 Q Except for us. Okay.

7 MR. BENNETT: Let's go off the record a
8 second.

9 (Recess)

10 MR. BENNETT: We don't have any more
11 questions. I appreciate your time. Mr. Love is
12 going to ask you something, I guess.

13 F U R T H E R
14 E X A M I N A T I O N

15 BY MR. LOVE:

16 Q I just have a few follow-ups here.

17 First of all, you mentioned some data earlier,
18 .4 percent for appeals. Does that include -- is that a
19 statistic that covers both the judgments in general
20 district court and circuit court?

21 A Just general district.

22 Q Just general district court. So of all the

1 judgments that are entered in general district courts in
2 Virginia, on average only .4 percent are actually
3 appealed?

4 A That's numbers that I ran for 2008 and 2009.

5 Q And then for satisfied you mentioned 15 to
6 16 percent. Is that also just for the general district
7 court?

8 A For the whole years of 8 and 9, and that
9 allows for cases up to now. So if anything was
10 satisfied from 2000 -- ran the numbers yesterday so I
11 would know that number. But if anybody ran a case in
12 2008 all the way up to 2010, that includes all of the
13 ones. All the cases that were appealed from those two
14 years would have been .4 percent. And any satisfactions
15 in that was actually 15.75, I believe, but it's not
16 quite 16 percent.

17 Q Did you run the numbers on the percentage of
18 judgments that are vacated in the general district
19 court?

20 A No.

21 Q Do you have any idea what the percentage of
22 judgments are in the general district courts on average
23 that are vacated or set aside?

24 A I'd just have to look at their numbers. I
25 could use their numbers and give you your answer, but...

1 Q Let's talk about -- you talked about
2 satisfactions being difficult to automate. And I wanted
3 to ask you to take another look at what was marked as
4 Exhibit 3 which is the training materials.

5 A Okay. Right.

6 Q On page A5, in the middle of that page is a
7 sample screen shot from civil hearing disposition update
8 screen; right?

9 A Right.

10 Q And down at the bottom left of that screen
11 shot, we talked about this entry before, it says "JGMT
12 SAT"; right?

13 A Right.

14 Q And that means judgment satisfied?

15 A Right.

16 Q And on that line, if a district court clerk,
17 general district court clerk receives information from a
18 plaintiff or some outside source that notifies the clerk
19 that a judgment has been satisfied, then the clerk will
20 enter a date on that line; correct?

21 A That's correct.

22 Q And the date that it enters will be the date
23 that the clerk received notice of the satisfaction?

24 A That's correct.

25 Q Satisfaction could have been conducted or --

1 that's not the right word. The satisfaction could have
2 occurred prior to the date the clerk received notice?

3 A Certainly.

4 Q But for uniformity and the court's purposes,
5 the date that's entered for the judgment satisfied is
6 the date the court receives notice?

7 A And there's a reason for that.

8 Q What is the reason for that?

9 A The reason for that is, that way someone can't
10 go back and say some decision was made based on -- we
11 used to just put a mark satisfied but we didn't know
12 when. So somebody could claim that, Oh, it was done in
13 2007, when really as far as the clerk's office knew, it
14 didn't occur until 2009. So if somebody went back and
15 checked judgments, they would see it wasn't satisfied
16 and it wasn't satisfied until 2009. It may have been
17 satisfied in 2007, but the plaintiff didn't let the
18 clerk's office know. And until the defendant said I
19 don't know why you still have that, it's been paid,
20 well, then you need to get the plaintiff to get in here
21 and get us a notice; okay?

22 I notice -- I know it's a problem sometimes
23 because somebody tries to close on a house and there is
24 a judgment outstanding, and they didn't realize it
25 because the judgment had been recorded in the circuit

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1 court and it's on the judgment lien docket in circuit
 2 court. So somebody can't, can't get a closing until
 3 they get that removed. But anyway, I've been in clerk's
 4 office when that has occurred. But anyway, so everybody
 5 runs around real quick and tries to get that paperwork
 6 in so you can purchase your house; okay?

7 Q And the information on the list that
 8 Ms. Soutter's attorneys requested recently, that
 9 information is all just from the general district courts
 10 in Virginia; correct?

11 A That's correct.

12 Q It doesn't contain any information from any
 13 circuit courts in Virginia?

14 A That's correct.

15 MR. LOVE: Those are all the questions I have.

16 Thank you, sir.

17 THE WITNESS: Okay.

18 MR. KUGELMAN: Any other --

19 MR. BENNETT: No. That's all. Thank you.

20 AND FURTHER THIS DEPONENT SAITH NOT.

21 SIGNATURE OF THE WITNESS WAIVED BY
 22 AGREEMENT OF COUNSEL AND THE WITNESS.

1 (Deposition concluded at 11:44 a.m.)

2 * * * * *

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:
 2 I, Gwenda E. Applegate, Court Reporter,
 3 Notary Public in and for the Commonwealth of
 4 Virginia at Large, and whose commission expires
 5 November 30, 2013, do certify that the aforementioned
 6 appeared before me, was sworn by me, and was thereupon
 7 examined by counsel; and that the foregoing is a true,
 8 correct, and full transcript of the testimony adduced.

9 I further certify that I am neither
 10 related to nor associated with any counsel or party
 11 to this proceeding, nor otherwise interested in the
 12 event thereof.

13 Given under my hand and notarial seal at
 14 Charlottesville, Virginia, this 8th day of October
 15 2010.

16
 17
 18
 19
 20
 21 Gwenda E. Applegate, Notary Public
 22 Commonwealth of Virginia at Large
 23 Registration Number 115863

1
 2 CHANGES REQUESTED TO THE DEPOSITION OF:
 3 KEN MITTENDORFF
 4 TAKEN: October 6, 2010

5
 6 PAGE/LINE: DESCRIPTION

7 _____
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 17 _____

18 DATE: _____

19 SIGNATURE: _____

20
 21 NOTARY PUBLIC: _____

22 MY COMMISSION EXPIRES: _____

23
 24
 25 REPORTED BY: GWENDA E. APPLEGATE, RPR, CRR

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